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DEC 05 2002

OFFICE OF PETITIONS

In re Application of
Compton, et al.
Application No. 09/942,146
Filed: August 29, 2001
Attorney Docket No. 960296.98342

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DECISION ON PETITION

This is in response to the preliminary amendment filed October 23, 2002, by facsimile transmission. On July 1, 2002, petitioners had filed a "Response to Notice of Incomplete Nonprovisional Application," requesting that based on an incorporation by reference statement drawings inadvertently omitted from the application be considered as filed on August 29, 2001, the date of filing of the above-identified divisional application.

Application papers in the above-identified application were filed on December 13, 2001. However, on January 14, 2002, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the application was deposited without drawings. The initial petition under § 1.182 was dismissed for failure to include an amendment submitting the three sheets of drawings and requesting that the requesting that the necessary omitted material contained in the prior application and submitted in the amendment, be included in the continuation or divisional application based upon the incorporation by reference statement (Decision mailed September 3, 2002).

As stated in the previous decision, the application as filed contained the incorporation by reference statement, incorporating the entire disclosure of prior application No. 09/627,986. MPEP 201.06 provides in, pertinent part, that:

Material needed to accord an application a filing date may not be incorporated by reference. Therefore, if a continuation or divisional application as originally filed incorporates by reference material omitted from the application papers, which is needed to accord the application a filing date, the application will not be entitled to a filing date. A petition under 37 CFR 1.182 and the required petition fee, including an amendment submitting the necessary omitted material, is required in order to accord the application a filing date as of the date of deposit of the continuation or divisional application. An amendment submitting the omitted material and relying upon the incorporation by reference will not be entered in the continuation or divisional application unless a decision granting the petition states that the application is

accorded a filing date and that the amendment will be entered.

The initial response was treated as a petition under § 1.182 and the required fee was charged to Deposit Account No. 17-0055. Petitioner has now submitted the required preliminary amendment requesting entry of the omitted material contained in the prior application and submitted in the amendment (e.g., three (3) sheets of drawings containing Figures 1-3).

In view thereof, the petition under § 1.182 is **GRANTED**. The amendment will be considered by the examiner in due course.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- according of a filing date of August 29, 2001, using the application papers received in the Office on that date and the drawings submitted on petition filed July 1, 2002, and for indication in the records of the Office that the application contains three (3) sheets of drawings; and
- mailing of a corrected filing receipt.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

Christina T. Donnell for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy